

# **Exhibit 3**

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**From:** Yung, Eva H. <eyung@axinn.com>  
**Sent:** Tuesday, May 28, 2024 6:12 PM  
**To:** Maier, Eric J.  
**Cc:** Boisvert, Caroline P.; Thorne, John; Henningson, Sven E. (Trip); Goodnow, Christopher C.; Bird, Daniel G.; Bitton, Daniel S.; Justus, Bradley; Boisvert, Caroline P.; Haws, Claire L.; Duffee, Nicholas D.M.; Davis, Tiberius T.; Yung, Eva H.  
**Subject:** [EXTERNAL] RE: In re: Google Digital Advertising Antitrust Litigation, No. 1:21-md-03010 (PKC) (S.D.N.Y.) - Contention Interrogatories to Daily Mail

Counsel,

We disagree with your characterization of the interrogatories we have served to date, and with your characterizations of the proposed interrogatories we shared with you last week for discussion. Beyond that, it is inappropriate for your client to condition its willingness to respond to Google's proposed interrogatories on Google's willingness to answer additional interrogatories that Daily Mail just shared with us for the first time this afternoon. Indeed, we think this kind of tit-for-tat discovery contradicts the guidance Judge Castel shared with the parties at last week's status conference. As always, we are of course willing to negotiate in good faith to appropriately modify the scope of our proposed interrogatories—for example, to the extent your client represents it will designate a Rule 30(b)(6) witness to provide testimony responding to particular contention interrogatories, we are open to modifying those interrogatories. Obviously, at this point, we only received Daily Mail's proposed response to the Rule 30(b)(6) notice the night of May 24, even though we served it on April 17. Accordingly, any claim that Google's proposed interrogatories are unnecessary due to forthcoming Rule 30(b)(6) discovery is premature at best.

Given that the parties appear to be at an impasse, and in light of the imminent deadline for serving contention interrogatories, we will shortly be moving for leave to serve Google's contention interrogatories.

Yours,

Eva

**Eva H. Yung**  
*Associate*



Axinn, Veltrop & Harkrider LLP  
114 West 47th Street  
New York, New York 10036  
Office 212.728.2235  
Fax 212.728.2201  
[eyung@axinn.com](mailto:eyung@axinn.com)  
[Axinn.com](http://Axinn.com)

**From:** Maier, Eric J. <emaier@kellogghansen.com>

**Sent:** Tuesday, May 28, 2024 12:55 PM

**To:** Yung, Eva H. <eyung@axinn.com>

**Cc:** Boisvert, Caroline P. <cboisvert@axinn.com>; Thorne, John <jthorne@kellogghansen.com>; Henningson, Sven E. (Trip) <shenningson@kellogghansen.com>; Goodnow, Christopher C. <cgoodnow@kellogghansen.com>; Bird, Daniel G. <dbird@kellogghansen.com>; Bitton, Daniel S. <dbitton@axinn.com>; Justus, Bradley <bjustus@axinn.com>; Boisvert, Caroline P. <cboisvert@axinn.com>; Haws, Claire L. <chaws@axinn.com>; Duffee, Nicholas D.M. <nduffee@axinn.com>; Davis, Tiberius T. <tdavis@kellogghansen.com>

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**Caution: External Email**

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Hi Eva,

Thank you for sharing your draft interrogatories.

Google already has served, and Daily Mail already has responded to 30 interrogatories, five more than are permitted under the Federal Rules or the Court's orders in this case. The numbering of your proposed interrogatories is misleading, as it omits the five additional interrogatories Google served and to which Daily Mail responded that Google labeled "Local Rule 33.3(a) Interrogatories." As we have elsewhere explained, the fact that those interrogatories sought information described in local rule 33.3(a) does not mean they are not subject to the limits on interrogatories in the Federal Rules and this Court's orders. Daily Mail also has undertaken the significant burden of responding to Google's numerous requests to supplement those interrogatory responses. Google now seeks to require Daily Mail to respond to 11 additional interrogatories, for a total of 41 interrogatories in this case.

Google's 11 newly proposed interrogatories are incredibly overbroad and unduly burdensome. The majority seek, either explicitly or implicitly, identification of "all facts or evidence" supporting certain allegations. Those interrogatories are improper. *See, e.g., Ritchie Risk-Linked Strategies Trading (Ireland), Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010) ("Defendants' requests, insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact—rather than, for example, certain principal or material facts, pieces of evidence, witnesses and legal applications—supporting the identified allegations, are overly broad and unduly burdensome."). The interrogatories also fail to heed Judge Castel's recent instruction that contention interrogatories are proper only for "things that can't be obtained, unless there's an interrogatory." 5/21/24 Tr. at 24:19-20. To take just one example, Google seeks "the facts and evidence on which" Daily Mail bases its allegation that "header bidding [is] a more favorable environment for publishers and rival exchanges." *See* Proposed Interrogatory No. 34. Daily Mail already has agreed to designate a witness to testify regarding "[t]he advantages and disadvantages of implementing Header Bidding." *See* Ltr. from E. Maier to E. Yung, App'x A at 2 (May 24, 2024). In light of that agreement, Google's interrogatory seeking the same information is unnecessary.

In order to avoid raising this dispute with the Court, Daily Mail is willing to agree to respond to four of Google's proposed interrogatories, if, and only if Google will agree to respond to the attached proposed interrogatories from Daily Mail. Specifically, Daily Mail will agree to respond to what Google calls Interrogatories 26-28 and 30, if Google will respond to Daily Mail's proposed interrogatories. This proposal is more than reasonable. With this compromise, Daily Mail will have responded to 34 interrogatories. Thus far, Google has responded or objected to only 20 interrogatories in this case. If Google agrees to Daily Mail's offer, it will respond to 30 total interrogatories in this case, still four fewer than Daily Mail. We are willing to meet and confer if that would be helpful. Given the impending deadline, we are willing to meet and confer this afternoon or tomorrow morning.

All the best,

Eric

**Eric J. Maier**

Kellogg, Hansen, Todd, Figel, & Frederick, P.L.L.C.  
1615 M Street, N.W. | Suite 400 | Washington, DC 20036 | (202) 326-7923

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**From:** Yung, Eva H. <[eyung@axinn.com](mailto:eyung@axinn.com)>

**Sent:** Thursday, May 23, 2024 6:03 PM

**To:** Thorne, John <[jthorne@kelloggghansen.com](mailto:jthorne@kelloggghansen.com)>; Bird, Daniel G. <[dbird@kelloggghansen.com](mailto:dbird@kelloggghansen.com)>; Goodnow, Christopher C. <[cgoodnow@kelloggghansen.com](mailto:cgoodnow@kelloggghansen.com)>; Maier, Eric J. <[emaier@kelloggghansen.com](mailto:emaier@kelloggghansen.com)>; Henningson, Sven E. (Trip) <[shenningson@kelloggghansen.com](mailto:shenningson@kelloggghansen.com)>; Davis, Tiberius T. <[tdavis@kelloggghansen.com](mailto:tdavis@kelloggghansen.com)>

**Cc:** Boisvert, Caroline P. <[cboisvert@axinn.com](mailto:cboisvert@axinn.com)>; Bitton, Daniel S. <[dbitton@axinn.com](mailto:dbitton@axinn.com)>; Justus, Bradley <[bjustus@axinn.com](mailto:bjustus@axinn.com)>; Boisvert, Caroline P. <[cboisvert@axinn.com](mailto:cboisvert@axinn.com)>; Haws, Claire L. <[chaws@axinn.com](mailto:chaws@axinn.com)>; Yung, Eva H. <[eyung@axinn.com](mailto:eyung@axinn.com)>; Duffee, Nicholas D.M. <[nduffee@axinn.com](mailto:nduffee@axinn.com)>

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Counsel,

Google is preparing to serve the attached draft contention interrogatories on Daily Mail under Local Rule 33.3(c). In accordance with the Court's instruction from the May 21, 2024 Case Management Conference that parties should meet and confer on interrogatories prior to serving, please provide your availability for a meet-and-confer ideally tomorrow, but in all events by noon on Tuesday, May 28. We will otherwise plan to file a motion seeking leave from the Court to serve on the evening of May 28.

Yours,

Eva

**Eva H. Yung**

***Associate***



Axinn, Veltrop & Harkrider LLP  
114 West 47th Street  
New York, New York 10036  
Office 212.728.2235  
Fax 212.728.2201  
[eyung@axinn.com](mailto:eyung@axinn.com)  
**Axinn.com**

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